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## OVERVIEW

Every child has the right to a permanent home which properly provides for his/her physical, mental, and emotional well-being in an environment free from abuse and neglect. When a child's parents are unable or unwilling to provide the child with such a home and when adoption is determined to be the appropriate plan for the child, termination of parental rights becomes necessary. Termination of parental rights, achieved either voluntarily or involuntarily, completely severs the parents' legal ties to the child and transfers such legal rights, including the right to consent to the child's adoption, to the Department of Human Services, the courts, or the Michigan Children's Institute.

## LEGAL AUTHORITY

### Federal Law

#### **The Adoption and Safe Families Act of 1997 (ASFA), P.L. 105-89**

AFA requires permanency hearings be held for children no later than 12 months after they enter foster care. The Act also requires that termination of parental rights be initiated for any child who has been in state custody for 15 out of the most recent 22 months.

### State Law

#### **Juvenile Code, 1939 PA 288, MCL 712A.19a**

Permanency Planning Requirements.

#### **Juvenile Code, 1939 PA 288, MCL 712A.19b(3)**

Explains the legal grounds for termination of parental rights.

#### **Child Protection Law, 1975 PA 238, MCL 722.638(2)**

If a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm, a request for termination of parental rights can be requested at initial dispositional hearing.

## PETITION TO TERMINATE PARENTAL RIGHTS

The following circumstances require a petition for termination of parental rights be filed with the court:

- CPS is mandated to file a petition to terminate parental rights under the Child Protection Law; see Request for Termination at Removal Hearing, in this item.
- The court orders the supervising agency to file a petition to terminate parental rights. This will often occur if a child is not returned home at or before the permanency planning hearing. The petition must be filed with the court no later than 28 days from the permanency planning or review hearing; see FOM 722-10, Court Review.
- The child has been in foster care for 15 of the most recent 22 months, unless the case service plan submitted to the court contains a compelling reason why termination is not in the child's best interest; see Termination of Parental Rights for a Child Out-of-Home for 15 of the Last 22 Months, in this item.

Unless mandated or ordered by the court in a written order, a petition to terminate parental rights must be filed only when it is clearly in the child's best interest and the health and safety of the child can be ensured in a safe and permanent home. The filing of the petition to terminate parental rights does not need to be delayed until a Permanency Planning Hearing; see FOM 722-10, Permanency Planning Hearing, for timeframes which to file a termination petition. Consultation with legal counsel (generally the prosecuting attorney) is necessary to determine if the case is appropriate and if there are sufficient legal grounds to pursue termination of parental rights.

If the supervising agency is mandated or ordered to file a petition to terminate parental rights and the agency does not believe it is in the child's best interest to terminate parental rights, the case service plan must document the compelling reasons; see Compelling Reasons, in this item.

A petition must allege and contain information supporting the allegation that termination of parental rights is, or is not, in the child's best interest. At the termination hearing, if the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interest the court must terminate parental rights and order that additional efforts to reunify the child and parent(s) not be made.

The Indian Child Welfare Act applies to American Indian/Alaska Native children when considering a petition to terminate parental rights; see NAA 255 Termination of Parental Rights.

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**Individuals Who  
May Petition for  
Termination**

In addition to the department, the following individuals may petition for termination of parental rights:

- The prosecuting attorney.
- The child.
- The child's guardian or custodian.
- The child's attorney or guardian ad litem.
- The children's ombudsman.
- A concerned person.

**Note:** The term "concerned person" includes the foster parent with whom the child is living or has lived, who has knowledge of specific behavior by the parent(s) which would provide grounds for termination of parental rights under MCL 712A.19b(3)(b) (physical or sexual abuse) or (3)(g)(neglect). Before the concerned person can file such a petition, that person must have contacted the department, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, to ensure that none of them are planning to file the petition.

If a termination of parental rights petition is filed by another party, the supervising agency must also file a petition for termination of parental rights if the department believes it is in the child's best interest to terminate parental rights.

**Termination of  
Parental Rights in  
a Case Involving  
an Incarcerated  
Parent**

Michigan Court Rule (MCR) 2.004 requires the petitioner in a child protection proceeding to notify the court that a party to the proceeding is incarcerated by the Michigan Department of Corrections (MDOC). When a caseworker or the department's legal representative files a supplemental petition requesting termination of parental rights in a case involving a parent incarcerated by the MDOC, the petition must contain a clause, near the top of the body of the petition, stating "A telephonic hearing is required pursuant to MCR 2.004." The clause must also contain the parent's prisoner number and location. If a parent is incarcerated in a county jail or a prison or jail in another state, the court may determine how the parent will

participate in the hearing, but the supervising agency is not required to raise the issue in the petition.

### **Parenting Time**

Parenting time is not automatically suspended at the time a petition to terminate parental rights is filed. Public Act (PA) 199 of 2008 amended MCL 712A.19b(4) and MCL 712A.19b(5). This law revises child welfare procedure by:

- Eliminating the automatic suspension of parenting time when a termination petition is filed.
- Requiring the court to find that terminating parental rights is in the child's best interests.

### **REQUEST FOR TERMINATION AT REMOVAL HEARING**

The Child Protection Law mandates that CPS include a request for termination of parental rights within the initial petition filed with the court, if a parent is a suspected perpetrator or a parent is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk; see PSM 715-3, Mandatory Petition-Request for Termination of Parental Rights, for a complete list of circumstances when a mandatory request for termination of parental rights must be made.

If parental rights are not terminated at the original dispositional hearing and the court orders the parent to participate in services to reunify the family, the caseworker must provide services and follow the court's orders. If the parent refuses to cooperate or there are new allegations of abuse or neglect which threaten the child's safety, the caseworker must consult with the attorney representing the department concerning filing a supplemental petition to terminate parental rights to achieve permanency for the child within a reasonable time frame; see FOM 722-13, Referrals to CPS, if there are new allegations of abuse or neglect.

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**LEGAL GROUNDS  
FOR TERMINATION  
OF PARENTAL  
RIGHTS**

The following are the legal grounds for termination of parental rights contained within the Juvenile Code:

1. The child has been deserted under either of the following circumstances:
  - The child's parent is unidentifiable, has deserted the child for 28 or more days, and has not sought custody of the child during that period. For the purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent.
  - The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.
2. The child or a sibling of the child has suffered physical injury or physical or sexual abuse under one or more of the following circumstances:
  - The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
  - The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.
  - A non-parent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the non-parent adult in the foreseeable future if placed in the parent's home; see FOM 721, Definitions of Terms, for a definition of a non-parent adult.
3. The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the

issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

- The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
  - Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
4. The child's parent has placed the child in a limited guardianship under section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, and has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.
  5. The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and the parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700.5207 and 700.5209, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.
  6. The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and both of the following have occurred:
    - The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or more before the filing of the petition or, if a support order has been entered, has

failed to substantially comply with the order for a period of 2 years or more before the filing of the petition.

- The parent, having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition.
7. The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide care and custody within a reasonable time considering the child's age.
  8. The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding two years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
  9. Parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.
  10. There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.
  11. The parent abused the child or a sibling of the child and the abuse included one or more of the following:
    - Abandonment of a young child.
    - Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
    - Battering, torture, or other severe physical abuse.
    - Loss or serious impairment of an organ or limb.
    - Life threatening injury.
    - Murder or attempted murder.
    - Voluntary manslaughter.

- Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.
  - Sexual abuse as that term is defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622.
12. The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.
13. The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state.
14. The parent is convicted of one or more of the following, and the court determines that termination of parental rights is in the child's best interest because continuing the parent-child relationship with the parent would be harmful to the child:
- A parent is convicted of a violation of the Michigan Penal Code, P.A. 328 of 1931, sections:
    - MCL 750.316 - 1st degree murder.
    - MCL 750.317 - 2nd degree murder.
    - MCL 750.520b - 1st degree criminal sexual conduct (CSC).
    - MCL 750.520c - 2nd degree CSC.
    - MCL 750.520d - 3rd degree CSC.
    - MCL 750.520e - 4th degree CSC.
    - MCL 750.520g - Assault with intent to commit CSC.
  - A parent is convicted of a violation of a criminal statute, an element of which is the use of force or the threat of force, and the parent is subject to sentencing under the following sections of the Code of Criminal Procedure, P.A. 175 of 1927 as a habitual offender:
    - MCL 769.10 - Subsequent felony.
    - MCL 769.11 - Subsequent felony of persons convicted of 2 or more felonies.



- MCL 769.12 - Subsequent felony of persons convicted of 3 or more felonies.
- A parent is convicted of a violation of a federal law or another state's law with provisions substantially similar to a crime or procedure listed in (i) or (ii) above.

**Note:** Caseworkers must refer to MCL 712A.19b by following the link: <http://legislature.mi.gov/doc.aspx?mcl-712A-19b> for an exact citation of the legal grounds for termination and they must consult with legal counsel to determine if conditions stated above apply before filing a termination petition.

#### TERMINATION OF PARENTAL RIGHTS FOR A CHILD OUT- OF-HOME FOR 15 OF THE LAST 22 MONTHS

The supervising agency must file or join in filing a petition requesting termination of parental rights if the child has been in foster care for 15 of the most recent 22 months, unless:

- The child is being cared for by relatives.

#### Compelling Reasons

- The written court order and case service plan documents a compelling reason for determining that a filing a petition to terminate parental rights would not be in the best interest of the child. Compelling reasons include but are not limited to:
  - Adoption is not the appropriate permanency plan for the child.
  - No grounds to file the termination exist.
  - The child is an unaccompanied refugee minor.
  - There are international legal obligations or compelling foreign policy reasons that preclude terminating parental rights.
  - The state has not provided the child's family, consistent with the time period in the case service plan, with the

services the state considers necessary for the child's safe return home, if reasonable efforts are required.

- Other. If this is the compelling reason, there must be a clear documentation within the case service plan.

The specific compelling reason must also be cited in the written court order.

If a petition is filed, it must be filed by the end of the 15th month that the child has been out of home, with the date the child entered care being the date the original petition was filed requesting removal of the child from his/her home.

**Note:** The caseworker does not have to wait until the end of the 15th month to document a compelling reason; this mandate can be met at the permanency planning hearing.

### Calculating Time Out of Home

When calculating the length of out of home placements, time spent in the living arrangements listed below should not be counted in the 15 months.

- Child's own home.
- Legal guardian.
- Out-of-state parent.
- Absent without legal permission (AWOLP).

When calculating the 15 months for children with multiple placement episodes, the caseworker must use a cumulative method.

**Example:** A child enters foster care on January 15, 2002, and is returned home or discharged from court jurisdiction three months later on April 15, 2002. She/he remains home for six months and then enters foster care again on October 15, 2002. The caseworker must use the date entered foster care as January 15, 2002, although when calculating the 15 months, the six months spent at home do not count.

If this child remains out of home for another 12 months, until October 15, 2003, the caseworker must either file a termination petition or document compelling reasons within the service plan, because the child will have been in foster care for a cumulative total of 15 out of the previous 22 months.

If the child in the above scenario does not return to foster care (out-of-home placement), until January 15, 2004, the caseworker would begin calculating a new 15 out of 22 month period, because the most recent date entered care is more than 22 months after the date the child previously entered foster care.

Therefore, if a child has been in foster care for 15 of the most recent 22 months, the caseworker must consult with the attorney representing the agency about filing a petition to terminate the parent's rights.

#### REFUSAL TO ACCEPT, AUTHORIZE OR DISMISSAL OF A PETITION

The local office must develop and maintain a protocol between the local offices, the prosecuting attorney's office, and the Family Division of Circuit Court outlining procedures for submitting petitions.

If the judge/referee refuses to accept, authorize, or dismisses a petition, with or without warning and regardless of the basis for dismissal, the Office of Children's Legal Services must be notified **immediately** to determine if the court's decision should be appealed or if other additional steps are required. The petition along with the pertinent court order must be forwarded to the Office of Children's Legal Services for review. Contact information for the Office of Children's Legal Services is as follows:

The Office of Children's Legal Services  
Phone: 517-373-2082  
Fax: 517-241-7340

In situations in which the supervising agency presents a mandatory petition to the prosecuting attorney's office for filing with the court and the prosecutor refuses to file the petition, the supervising agency must file the petition directly with the court. The prosecuting attorney's refusal and the department's actions must be documented in the case record, and the Office of Children's Legal Services must be notified **immediately**. The petition along with the pertinent court orders must be forwarded to the Office of Children's Legal Services for review.

**Note:** Direct filing of a mandatory petition is a legal requirement and is not open to local office interpretation.

**Representation by  
the Attorney  
General or Private  
Attorney**

If the local prosecuting attorney will not represent the department in a mandatory child welfare action, the local office can request representation by the Attorney General or a private attorney; see FOM 903-09, Non-Scheduled Payments.